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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No.

2012-39

13 **JOANN LORBIECKI**
25982 La Cuesta
14 **Laguna Hills, CA 92653**

A C C U S A T I O N

15 **Registered Nurse License No. 212081**

16 **Nurse Practitioner No. 3598**

17 **Nurse Practitioner Furnishing No. 3598**

18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

22 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
23 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
24 Consumer Affairs.

25 2. On or about November 30, 1970, the Board of Registered Nursing issued Registered
26 Nurse License Number 212081 to Joann Lorbiecki (Respondent). The Registered Nurse License
27 was in full force and effect at all times relevant to the charges brought herein and will expire on
28 June 30, 2012, unless renewed. On January 16, 1987, Respondent was issued Nurse Practitioner

1 Number 3598. Nurse Practitioner Number 3598 was in full force and effect at all times relevant
2 to the charges brought herein and will expire on June 30, 2012, unless renewed. On May 22,
3 1995, Respondent was issued Nurse Practitioner Furnishing Number 3598. Nurse Practitioner
4 Furnishing Number 3598 was in full force and effect at all times relevant to the charges brought
5 herein and will expire on June 30, 2012, unless renewed.

6 JURISDICTION

7 3. This Accusation is brought before the Board of Registered Nursing (Board),
8 Department of Consumer Affairs, under the authority of the following laws. All section
9 references are to the Business and Professions Code unless otherwise indicated.

10 4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part,
11 that the Board may discipline any licensee, including a licensee holding a temporary or an
12 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
13 Nursing Practice Act.

14 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
15 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
16 licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the
17 Code, the Board may renew an expired license at any time within eight years after the expiration.

18 STATUTORY PROVISIONS

19 6. Section 482 of the Code states:

20 "Each board under the provisions of this code shall develop criteria to evaluate the
21 rehabilitation of a person when:

22 "(a) Considering the denial of a license by the board under Section 480; or

23 "(b) Considering suspension or revocation of a license under Section 490.

24 "Each board shall take into account all competent evidence of rehabilitation furnished by
25 the applicant or licensee."

26 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
27 revoke a license on the ground that the licensee has been convicted of a crime substantially
28

1 related to the qualifications, functions, or duties of the business or profession for which the
2 license was issued.

3 8. Section 493 of the Code states:

4 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
5 the department pursuant to law to deny an application for a license or to suspend or revoke a
6 license or otherwise take disciplinary action against a person who holds a license, upon the
7 ground that the applicant or the licensee has been convicted of a crime substantially related to the
8 qualifications, functions, and duties of the licensee in question, the record of conviction of the
9 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
10 and the board may inquire into the circumstances surrounding the commission of the crime in
11 order to fix the degree of discipline or to determine if the conviction is substantially related to the
12 qualifications, functions, and duties of the licensee in question.

13 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
14 'registration.'"

15 9. Section 2761 of the Code states:

16 "The board may take disciplinary action against a certified or licensed nurse or deny an
17 application for a certificate or license for any of the following:

18 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

19 "....

20 "(f) Conviction of a felony or of any offense substantially related to the qualifications,
21 functions, and duties of a registered nurse, in which event the record of the conviction shall be
22 conclusive evidence thereof.

23 "...."

24 10. Section 2762 of the Code states:

25 "In addition to other acts constituting unprofessional conduct within the meaning of this
26 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
27 chapter to do any of the following:

28 "....

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

"(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

“ . . . ”

REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 1444, states:

“A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

“(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

“(b) Failure to comply with any mandatory reporting requirements.

“(c) Theft, dishonesty, fraud, or deceit.

“(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.”

12. California Code of Regulations, title 16, section 1445, states:

“ . . .

“(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

“(1) Nature and severity of the act(s) or offense(s).

“(2) Total criminal record.

“(3) The time that has elapsed since commission of the act(s) or offense(s).

“(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

“(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

“(6) Evidence, if any, of rehabilitation submitted by the licensee.”

COSTS

13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(March 17, 2005 Criminal Conviction for DUI on September 25, 2004)

14. Respondent is subject to disciplinary action under sections 490 and 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

15. On or about March 17, 2005, in a criminal proceeding entitled *People v. Joann Lorbiecki*, in Orange County Superior Court, case number 04SM05706, Respondent was convicted on her plea of guilty of violating Vehicle Code section 23152, subdivision (b), driving with blood alcohol concentration (BAC) of .08% or more, a misdemeanor. A count of violation of Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol, was dismissed pursuant to a plea agreement.

16. As a result of the conviction, on or about March 17, 2005, Respondent was sentenced to three years informal probation. Among other conditions, she was ordered to pay fines and fees and attend a 6 month Level 2 First Offender Alcohol Program.

17. The facts that led to the conviction are that on or about September 25, 2004, an officer with the Orange County Sheriff's Department was on patrol in Laguna Niguel at approximately 11:05 p.m. when the officer saw a silver Lexus go eastbound on Aliso Creek that was about to turn onto Moulton Parkway. The officer saw the Lexus begin to change lanes without signaling and then not complete this lane change. The Lexus straddled between the lanes and swerved back and forth over the white line dividing the lanes. The officer stopped the Lexus. The driver, Respondent, stepped out of the Lexus and fell backwards into the doorway. Respondent caught herself by grabbing the doorframe. The officer smelled a "very strong" odor of alcohol on her breath. Respondent said she had three glasses of wine that night with friends and that she was on her way home. Respondent failed to perform field sobriety tests as instructed and was arrested. Respondent was tested twice for blood alcohol concentration and the results were .21% and .19%, respectively.

SECOND CAUSE FOR DISCIPLINE

(September 30, 2010 Criminal Convictions for DUI on February 15, 2010)

18. Respondent is subject to disciplinary action under sections 490 and 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

19. On or about September 30, 2010, in a criminal proceeding entitled *People v. Joann Lorbiecki*, in Orange County Superior Court, case number 10SM01178, Respondent was convicted on her plea of guilty of one count of violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol with a prior conviction, a misdemeanor, and a second count of violating Vehicle Code section 23152, subdivision (b), driving with BAC of .08% or more with a prior conviction, a misdemeanor.

20. As a result of the convictions, on or about September 30, 2010, Respondent was sentenced to three years informal probation and thirty days in jail. She was ordered to pay fines and fees, complete an 18 month Multiple Offender Alcohol Program, and serve sixty days at the Embrace Recovery Program.

1 21. The facts that led to the conviction are that on or about February 15, 2010, at
2 approximately 10:03 p.m, deputies with the Orange County Sheriff's Department responded to a
3 traffic accident in Laguna Hills. The deputies arrived at Terra Bella Avenue, a two-lane street,
4 and saw Respondent standing in the street near her Lexus. Respondent's Lexus had damage to
5 the front bumper, right front fender, and the wheel assembly. Respondent was wearing
6 sunglasses even though it was dark and slurred her words when she spoke to the deputies.
7 Respondent told the deputies that she was at a friend's house in Rancho Santa Margarita when
8 she and her friend split a bottle of wine. Respondent was on her way home when she hit a parked
9 car on the side of Terra Bella. The parked vehicle was badly damaged and the force of the
10 collision pushed the right front wheel up onto the sidewalk. The deputies had Respondent
11 perform various field sobriety tests, which she failed. Respondent's BAC was recorded to be
12 .16%.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct-Use of Alcohol in a Dangerous Manner)**

15 22. Respondent is subject to disciplinary action under section 2762, subdivision (b) of the
16 Code in that on or about September 25, 2004, and February 15, 2010, as described in paragraphs
17 17 and 21, above, Respondent used alcoholic beverages to an extent or in a manner that was
18 potentially dangerous and injurious to herself, and to others in that she operated a motor vehicle
19 with significantly high blood alcohol concentrations.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct-Conviction of Alcohol-Related Criminal Offenses)**

22 23. Respondent is subject to disciplinary action under section 2762, subdivision (c) in
23 that on or about March 17, 2005, and September 30, 2010, as described in paragraphs 15-16 and
24 19-20, above, Respondent was convicted of criminal offenses involving the consumption of
25 alcohol, which constitutes unprofessional conduct.

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1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking or suspending Registered Nurse License Number 212081, Nurse
5 Practitioner Number 3598, and Nurse Practitioner Furnishing Number 3598 issued to Joann
6 Lorbiecki;

7 2. Ordering Joann Lorbiecki to pay the Board of Registered Nursing the reasonable
8 costs of the investigation and enforcement of this case, pursuant to Business and Professions
9 Code section 125.3; and

10 3. Taking such other and further action as deemed necessary and proper.

11
12 DATED: July 19, 2011

13 for Stacy Ben
14 LOUISE R. BAILEY, M.ED., RN
15 Executive Officer
16 Board of Registered Nursing
17 Department of Consumer Affairs
18 State of California
19 Complainant

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